

John and Ruth Ramsey Living Trust

v.

Department of Revenue Administration

Docket No.: 27961-14LM

ORDER

In response to the board's September 8, 2015 Order ("Order"), the department of revenue administration ("DRA") submitted a "written statement" requesting a dismissal of this appeal (the "Dismissal Request"). After weighing the evidence presented and the applicable law, and for the reasons stated below, the board denies the Dismissal Request and remands this appeal to the DRA. On remand, the DRA shall decide the Taxpayer's "2014 Low and Moderate Income Homeowners Property Tax Relief Application" (the "Application") promptly and on the merits.

The Dismissal Request is based on the DRA's belief that the timeline for filing the Application should not be extended due to "accident, mistake or misfortune." The board disagrees with the DRA's arguments.

As stated in the Order, the applicable statutes prescribe a time frame for filing the annual Application (between May 1 and June 30) but also provides for acceptance of an Application filed on or before November 1 if the claimant was prevented from filing earlier "due to accident, mistake or misfortune." Mr. & Mrs. Ramsey are elderly (85 and 88 years old) and have filed

timely Applications in prior years; for tax year 2014, however, they did not do so because of a memory lapse and because “there are no reminders anymore” (forms not available at local library and town hall to trigger their memories). (See their September 11, 2015 letter to the board.)

There is no dispute the Application was filed with the DRA in August, well before November 1, but, as argued by the DRA, “forty-one (41) days after the deadline of June 30. . . .” (See Dismissal Request, ¶3.)

The board does not agree the Taxpayer’s failure to timely file the Application was “due to neglect, rather than accident, mistake or misfortune.” (Cf. Dismissal Request, ¶6.) The courts have not developed a bright line test for determining what constitutes accident, mistake or misfortune. The definition quoted in ¶5 of the Dismissal Request [“something outside of one’s control, or something which a reasonably prudent person would not be expected to guard against or provide for,” citing “Lakeview Homeowners Assoc. v. Moulton Constr., 141 N.H 789, 791 (1997)”] frames the relevant questions, but does not resolve them. Surely, the test of what a “reasonably prudent person” would or could do should depend, to a considerable extent, on that person’s age and physical and mental condition. Here, the facts presented permit a reasonable finding the delayed filing was neither intentional nor neglectful, but rather the result of advanced age and accompanying physical and mental condition; when such factors exist, they are clearly outside of anyone’s control.

There is no evidence in the record before the board that the DRA, in denying the Application, took these relevant factors into account. Applying its judgment and experience, the board finds it was arbitrary and unreasonable not to do so. Cf. RSA 198:60, II; and, e.g., Hajjar v. Department of Revenue Administration, BTLA Docket No. 26720-12LM (October 7, 2013 Order) [later filing of application excused due to accident, mistake and misfortune and remand

ordered to DRA for determination on the merits; facts presented included taxpayer's statement that she "cannot remember everything that I need to do in a timely fashion" after the death of her husband].

The board's determination the Taxpayer qualifies for consideration of the Application on the merits due to accident, mistake and misfortune is supported by the additional research the board has undertaken. See Lakeview, 141 N.H. at 791 (1997): "The question whether accident, mistake or misfortune occurred is for the trier of fact, and its finding will be conclusive unless unsupported by the evidence. [Citation omitted.]; accord, In re Birmingham, 154 N.H. 51, 56 (2006).¹

For all of these reasons, the Dismissal Request is denied and the Taxpayer's Application is remanded to the DRA for a final determination on the merits.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chairman

Albert F. Shamash, Member

Theresa M. Walker, Member

¹ More generally, see 47 Am.Jur.2d "Judgments" §686 (database updated August 2015) (noting the absence of "fixed standards to determine the parameters" and resolution "turns upon the unique factual background of the particular case"). Each of the four factors cited in this treatise (danger of prejudice, length of delay, reason for delay and good faith) exist in favor of the Taxpayer in this appeal. (Id., §689.)

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CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: John & Ruth Ramsey Living Trust, c/o John I. & Ruth C. Ramsey, PO Box 471, Walpole, NH 03608, Taxpayer; and Shaun P. Thomas, Esq., State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Dated: October 21, 2015

Anne M. Stelmach, Clerk